

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 44-211.51

Specific Purpose:

This section is being amended to expand the use of homeless assistance payments to include eviction prevention.

Factual Basis:

The amendment to this section is necessary to comply with Welfare and Institutions Code Section 11450(f)(2), as amended by AB 1808, Sections 31.1 and 31.2 (Chapter 75, Statutes of 2006), which expanded the use of homeless assistance payments to include eviction prevention.

Section 44-211.511(e)

Specific Purpose:

This section is being adopted to include receipt of a pay rent or quit notice as one of the factors to determine homelessness.

Factual Basis:

This adoption is necessary to comply with Welfare and Institutions Code Section 11450(f)(2) as amended by AB 1808, Section 31.1 and 31.2 (Chapter 75, Statutes of 2006).

Section 44-211.525 Handbook (a)(1) through (b)(2)

Specific Purpose:

This section is being amended to increase the temporary shelter rate amount to \$65 per day and for the fifth and each additional member of an AU to \$15, for a maximum of \$125 per day, and to update the effective date.

Factual Basis:

This section is being amended to comply with Welfare and Institutions Code Section 11450(f)(2)(A), as amended by AB 1808, Sections 31.1 and 31.2 (Chapter 75, Statutes of 2006), effective July 12, 2006.

Section 44-211.526(a)(1) Handbook through (a)(3)

Specific Purpose:

This section is being amended to update the example based on the increased temporary shelter rate of \$65 per night.

Factual Basis:

This amendment is necessary to comply with Welfare and Institutions Code Section 11450(f)(2)(A), as amended by AB 1808, Sections 31.1 and 31.2 (Chapter 75, Statutes of 2006).

Section 44-211.53

Specific Purpose:

This section is being amended to provide that Permanent HA is also available to prevent eviction by obtaining or retaining permanent housing.

Factual Basis:

This section is amended to comply with Welfare and Institutions Code Section 11450(f)(2)(B), as amended by AB 1808, Section 31.1 and 31.2 (Chapter 75, Statutes of 2006).

Section 44-211.531 through .531(b)

Specific Purpose:

This section is being adopted to provide that Permanent HA is also available to prevent eviction, and to allow counties to pay up to two months of rent arrearages, with each month of rent arrearages payment not to exceed 80 percent of the total monthly household income (TMHI).

Factual Basis:

This section is adopted for necessity to comply with Welfare and Institutions Code Section 11450(f)(2)(B), as amended by AB 1808, Section 31.1 and 31.2 (Chapter 75, Statutes of 2006)

Section 44-211.532 through .532(b)(3) (Renumbered from 44-211.531(a) and (b))

Specific Purpose:

This section is renumbered from Section 44-211.531(a) and (b) and amended to repeal a reference to MAP and replaces this with a reference to TMHI. Reference to Section 44-211.531 in subsection (a) has been amended to Section 44-211.532, as this section has been renumbered.

Factual Basis:

The rent threshold for Permanent HA changed from 80 percent of the MAP level to 80 percent of the TMHI. This change is necessary to comply with Welfare and Institutions Code Section 11450(f)(2)(B), as amended by AB 1808, Section 31.1 and 31.2 (Chapter 75, Statutes of 2006).

Section 44-211.533 through .533(e) including Handbook

Specific Purpose:

This section is being adopted to provide a new allowable use of Permanent HA payments to prevent eviction and to describe eligibility requirements for these rent arrearage payments. The handbook sections have been added to provide two examples of expenses and reasons of financial hardship.

Factual Basis:

This section is adopted for necessity to comply with Welfare and Institutions Code Section 11450(f)(2)(B), as amended by AB 1808, Sections 31.1 and 31.2 (Chapter 75, Statutes of 2006), which expanded the use of Permanent HA payments to pay for rent arrearages.

Final Modification:

Following the public hearing, Section 44-211.533(a)(1) is being further amended to clarify that an AU must provide proof of a proposed or pending eviction such as a notice to pay rent or quit notice or court eviction papers. Section 44-211.533(a)(2) is being amended to require the AU to provide proof that the eviction is a result of financial hardship and not for other lease or rental violations.

Section 44-211.533(a)(4)- No revisions are being made in response to the public testimony. This section is clear as written.

Section 44-211.533(b)(1) Handbook is amended in response to public testimony to clarify examples of expenses that might cause the AU to experience financial hardship.

Section 44-211.533(b)(2) Handbook is amended in response to public testimony to clarify additional examples of financial hardship not considered extraordinary circumstances for an AU.

Section 44-211.534 through .534 (b)(3)

Specific Purpose:

This section is being adopted to include new definitions to the once-in-a-lifetime Permanent HA Program: Income and Total Monthly Household Income (TMHI), and to instruct counties regarding whose income must be considered in the TMHI and how to count that income.

Factual Basis:

The adoption of this section is necessary to comply with Welfare and Institutions Code Section 11450(f)(2)(B), as amended by AB 1808, Sections 31.1 and 31.2, (Chapter 75, Statutes of 2006), which provides new rules for what income and whose income counts in determining eligibility for the Permanent HA payment.

Section 44-211.535(b) (Renumbered from Section 44-211.532)

Specific Purpose:

This section is renumbered for numerical sequencing and amended to require that the portion of the security deposit payment, available for last month's rent shall not exceed 80 percent of the AU's TMHI.

Factual Basis:

The amendment of this section is necessary to comply with Welfare and Institutions Code Section 11450(f)(2)(B), as amended by AB 1808, Sections 31.1 and 31.2, (Chapter 75, Statutes of 2006), which changed the security deposit payment amount available for last month's rent from 80 percent of the AU's MAP to 80 percent of the AU's TMHI.

Section 44-211.536 (Renumbered from Section 44-211.533)

Specific Purpose/Factual Basis:

This section is renumbered for numerical sequencing and amended from Section 44-211.533 to Section 44-211.536. A cross reference has been updated as a result of renumbering to maintain the numerical sequencing.

Section 44-211.537 (Renumbered from Section 44-211.534)

Specific Purpose:

This section is renumbered from 44-211.534 to 44-211.537 for numerical sequencing and amended to update a reference to the TMHI.

Factual Basis:

The amendment to this section is necessary to comply with Welfare and Institutions Code Section 11450(f)(2)(B), as amended by AB 1808, Sections 31.1 and 31.2, (Chapter 75, Statutes of 2006), which changed the rent threshold for Permanent HA from 80 percent of the MAP level to 80 percent of the TMHI, and to maintain numerical sequence.

Section 44-211.538 (Renumbered from Section 44-211.535)

Specific Purpose/Factual Basis:

This section is renumbered for numerical sequencing.

Section 44-211.539 (Renumbered from Section 44-211.536)

Specific Purpose/Factual Basis:

This section is renumbered for numerical sequencing.

b) Identification of Documents Upon Which Department Is Relying

Assembly Bill 1808, Sections 31.1 and 31.2 (Chapter 75, Statutes of 2006).

c) Local Mandate Statement

The regulations do impose a mandate upon local agencies, but not upon school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code because there is no estimated increase in local costs associated with the implementation of these regulations.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action, or that has otherwise been identified and brought to the attention of CDSS and would lessen any adverse impact on small business.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #01 at the public hearing held on September 16, 2009 in Sacramento, California. Oral testimony was not presented; however, written comment was received during the 45-day comment period from Jodie Berger, Legal Services of Northern California, Stephen Bingham, Bay Area Legal Aid and Nu Usaha, Western Center on Law & Poverty.

The testifiers commented in the following manner:

- 44-211  
Section 44-211.533(a)(1) and (2)

1. Comment:

Our main concerns with the proposed regulations are:

1. 44-211.533(a)(1) and (2) should be clarified.

The requirement of "proof of a pending eviction" is confusing because, legally, the pending eviction is once the court papers have already been filed. The homeless prevention can occur anytime an eviction is proposed based on financial (or other rental violations) reasons. So, for example, someone who has a 30-day notice to pay rent or quit (but who proves it's for financial reasons) or a 3-day notice to pay rent or quit, or who has been served with eviction pleadings, but can establish that the landlord will dismiss the eviction if the back rent is provided, should all be eligible.

- a. As drafted, there is a separate requirement to prove the eviction, with the example of a "pay rent or quit" notice. Another section requires prove that the eviction was because of financial hardship and not lease violations. The pay rent or quit example being listed with the proof of eviction makes the second section's requirement of proof the eviction was based on financial reasons confusing, since a "pay rent or quit" notice is per se evidence that the eviction is based on financial and other lease violations.

The redrafted section would read:

- (1) The AU must provide proof of a proposed or pending eviction.
  - (a) Notices to quit (3 day, 30 or 60 days) and court eviction papers are evidence of proposed or pending evictions.
- (2) The AU must provide proof that the eviction is the result of financial hardship, and not for other lease or rental violations.

- (a) A "notice to pay rent or quit" establishes the eviction is based on financial reasons.

Response

The Department agrees in part with the commenter and amended this section to clarify that an AU must provide proof of a proposed or pending eviction such as a notice to pay rent or quit and/or court order papers. In addition, the AU must provide proof to the CWD that the eviction is a result of financial hardship and not for other lease or rental violations.

However, CDSS disagrees with adding the number of days of the pay rent or quit notice (3 days, 30 or 60 days). This should not be specified due to varying notification used by landlords which may impose unintended limits on the types of acceptable proof. Furthermore, a notice to pay rent or quit does not establish that an eviction is due solely to financial reasons. An AU can receive a notice to pay rent or quit due to other lease or rental violations such as the upkeep of the rental property. The AU must show the eviction was caused by financial hardship.

2. Comment

2. 44-211.533(a)(4) can be improved by re-writing it to read:

(4) "the financial crisis the family is experiencing could result in homelessness, as set forth in MPP Section 44-211.511, if preventative assistance is not provided.

Response

The Department disagrees with the commenter. The language used is clear and concise as written.

3. Comment

3. 44-211.533(b)(1) sets out examples of financial hardship beyond the AU's control. Given how close to the edge families are financially, the recent COLA suspensions and grant cuts, the examples should be changed as follows:

- a. Medical expenses not covered by Medi-Cal. For example, the need to buy over-the-counter medicines or other medical bills could render a family unable to pay their rent. The example should not be limited to hospital bills.
- b. High utility bills resulting from circumstances beyond the AU's control, such as weather extremes, or repair problems (such as broken window or need to use space heater when gas heater breaks). (Weather is always somewhat unforeseeable.)
- c. Loss of wages due to illness of self or family members, or temporary unemployment.

Response:

The Department agrees with the commenter and amended this section to include additional examples of expenses that might cause the AU to experience financial hardship.

4. Comment:

4. 44-211.533(b)(2) sets forth examples of what would *not* be considered extraordinary circumstances beyond the household's control. Two of the examples are over-broad and likely to cause more confusion than clarification.

- a. "Failure to budget appropriately"--This is such a broad statement it is likely to be incorrectly applied or applied too subjectively. There are many times when a family must choose between some immediate need and rent. The statement does not provide any guidance on reviewing the household's normal expenses for necessities and whether some immediate need occurred. The situation targeted is covered by the first example (purchase of non-essential goods). This example should therefore be deleted.
- b. "Paying off regular credit card debts"--Again, there is no guidance that the worker should look at the family circumstance in determining whether the credit card payment was necessary and based on unusual circumstances beyond the household's control. For example, we are aware of many cases in which recipients are not provided advance pay or timely reimbursement of support services for which they are eligible, sometimes for months at a time, who are forced to place these costs on personal credit cards. The situation targeted is covered by the first example (purchase of non-essential goods). This example could be modified to read "normally occurring credit card expenses, not related to unusual or unanticipated expenses."

Response:

The Department agrees in part with the commenter. Language has been modified to further clarify examples.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. No written testimony on the modifications renoticed for public comment from February 5, 2010 to February 22, 2010 was received.